

Message Text

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TAGS: CGEN, ETRD, PFOR, CPRS, JA

SUBJECT: JUDICIAL ASSISTANCE: REQUESTS FOR FEDERAL JUDGES TO
PRESIDE OVER DEPOSITION PROCEEDINGS IN JAPAN

REFS: (A) STATE 202954 - MITSUI V. UNITED STATES; (B) STATE
213103 - WESTINGHOUSE/MITSUBISHI; (C) STATE 256401 -
IN RE NISSAN MOTOR CO.

1. THESE THREE CASES INVOLVE REQUESTS FOR APPROVAL BY GOJ
FOR THE TAKING OF DEPOSITIONS IN JAPAN BEFORE FEDERAL JUDGES
WHO IN EACH CASE ARE ALSO THE TRIAL JUDGE IN THE U.S.

2. MFA OFFICER INFORMED CONGEN THAT THESE REQUESTS FOR WHAT
ESSENTIALLY AMOUNT TO THE EXERCISE OF A TRIAL FUNCTION BY
A FOREIGN COURT ON JAPANESE SOIL PRESENT THEM WITH SEVERE
DIFFICULTIES. IN THE MITSUI CASE THE NUMBER OF WITNESSES
IS UNCERTAIN AND IT IS ESTIMATED THE PROCEEDING WILL TAKE
THREE WEEKS IN TOKYO AND OSAKA. THE CUSTOMS COURT JUDGE
WOULD BE ACCCOMPANIED BY A COURT REPORTER AND CLERK OF COURT,
MAKE RULINGS FROM THE BENCH, OBSERVE DEMEANOR OF WITNESSES,
ETC ALL OF WHICH MFA CONSIDERS TO BE TRIAL RESPONSIBILITIES.

3. MFA OFFICER (NUMATA) FURTHER STATED THAT GOJ BELIEVES
THE CONSULAR TREATY DID NOT CONTEMPLATE ANY PROCEEDINGS OF
SUCH A NATURE. ALSO THAT MFA COULD NOT FORESEE ANY POSSIBIL-
ITY THAT THE U.S. WOULD EVER BE CALLED UPON TO GRANT

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BILUTY THAT THE U.S. WOULD EVER BE CALLED UPON TO GRANT

SUCH AN UNUSUAL PRIVILEGE ON A BASIS OF RECIPROCITY SINCE
UNDER GOJ LAW NO JAPANESE JUDGE WOULD EVER BE PERMITTED
TO CONDUCT A SIMILAR PROCEEDING IN A FOREIGN COUNTRY.

4. IN THE MITSUI CASE, TO WHICH MOST ATTENTION WAS GIVEN,
IT IS STILL NOT UNDERSTOOD WHY MITSUI CAN NOT SEND ITS
WITNESSES TO THE U.S. FOR APPEARANCE BEFORE THE COURT
THERE. THIS SAME VIEW IS PRESENT IN THE OTHER TWO CASES.

5. IN ORDER TO GIVE FURTHER CONSIDERATION TO THESE REQUESTS
MFA WOULD APPRECIATE RECEIVING INFO AS TO WHAT OTHER COUN-
TRIES IN MODERN TIMES HAVE PERMITTED AMERICAN JUDGES TO PER-
SONALLY CONDUCT PROCEEDINGS OF A JUDICIAL NATURE WITHIN
THEIR BORDERS, INCLUDING THE DATES AND NATURE OF THE PRO-
CEEDINGS, DURATION, ETC. MUCH STRONGER EVIDENCE IS NEEDED
TO JUSTIFY WHAT MFA CONSIDERS QUOTE THESE VERY DIFFICULT
REQUESTS UNQUOTE.

6. COMMENT: WHILE MFA HAS NOT YET GIVEN A DEFINITE NEGA-
TIVE ANSWER, IT IS CLEAR THAT SECURING APPROVAL WILL BE
DIFFICULT. THE TRADITIONALLY SENSITIVE ISSUE OF INFRINGEMENT
OF SOVEREIGNTY IS INVOLVED AS WELL AS THE POSSIBLE THREAT
THAT OPPOSITION PARTIES MIGHT ATTEMPT TO CAPITALIZE ON
SUCH AN ISSUE BY ATTACKS ON THE GOVERNMENT IN THE DIET.
IF THE DEPARTMENT CONSIDERS IT OF MAJOR IMPORTANCE THAT
THESE REQUESTS BE GRANTED, IT MAY BE NECESSARY FOR THE
AMBASSADOR OR DCM TO TAKE THEM TO A HIGHER LEVEL AS WAS
REQUIRED. IN CONNECTION WITH THE HISTORIC PRISONER
DEPOSITION CASE OF LAST JANUARY. EVEN SO, IT IS DOUBTFUL
WHETHER APPROVAL WOULD HAVE BEEN GRANTED IN THAT CASE IF
THE TRIAL JUDGE HAD BEEN PRESENT.

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